

### Semi-Annual Audit Recovery Report

In the *Schools and Libraries Fifth Report and Order*,<sup>1</sup> the Federal Communications Commission (FCC or Commission), directed the Universal Service Administrative Company (USAC) to “submit a report to the Commission on a semi-annual basis summarizing the status of all outstanding audit findings. To the extent findings cannot be resolved within six months; USAC shall describe the status of its efforts, and provide a projected timeframe for completion.”<sup>2</sup> This submission summarizes outstanding audit-related recoveries as of August 31, 2019, and consists of this report and the attached spreadsheet.

#### **Process for Seeking Recovery of Funds**

The process for seeking recovery based on audit finding(s) is comprised of the following stages:

1. After reviewing an audit report, USAC management may determine that additional outreach is necessary and may contact the applicant and/or service provider, depending on the nature of the audit findings. In general, USAC management will only contact the applicant and/or service provider if:
  - (1) The party responsible for the rule violation was not given an opportunity to respond to findings during the audit or did not have adequate time to respond to the findings;
  - (2) The findings are complex and further explanation is warranted; or
  - (3) It is unclear whether program rules have been violated.
- If contacted, the applicant and/or service provider may submit written documentation or provide a verbal response, depending on what information is needed.
2. Generally, within ninety (90) days of an audit report being deemed final or USAC completing any additional outreach, USAC issues a Notification of Commitment Adjustment Letter or Notification of Recovery of Improperly Disbursed Funds Letter (collectively, “Notification Letter”), to the applicant and/or service provider, as appropriate.
3. If the applicant and/or service provider does not appeal the Notification Letter within sixty (60) days of the date the letter is sent, USAC issues the First Demand Payment Letter on the 61<sup>st</sup> day and notifies the applicant and/or service provider (whichever party is determined to be responsible for the rule violations) that USAC intends to seek recovery.
4. If the applicant and/or service provider does not respond to the First Demand Payment Letter, or does not make satisfactory arrangements to repay the debt within thirty (30) days of the date of the First Demand Payment Letter, a Second Demand Payment Letter is issued

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<sup>1</sup> See *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order and Order, 19 FCC Rcd 15808 (2004) (*Schools and Libraries Fifth Report and Order*).

<sup>2</sup> *Id.* at 15834, para. 77.

and the Red Light rule is activated for that applicant and/or service provider.<sup>3</sup> The Commission allows applicants and/or service providers to enter into payment plan arrangements with USAC to pay the recovery amount.<sup>4</sup> If the applicant and/or service provider does not respond to the Second Demand Payment Letter, or does not make satisfactory arrangements to repay the funds within thirty (30) days of the date of the Second Demand Payment Letter, USAC will issue a Notice of Dismissal Letter for any pending FCC Form 471 applications, which will deny these applications. USAC will also advise the Commission of the party's failure to repay this debt and will transfer the debt to the U.S. Department of Treasury (U.S. Treasury) for collection in accordance with the Debt Collection Improvement Act (DCIA).<sup>5</sup>

5. If an appeal is filed with USAC or an appeal and/or request for waiver is filed with the Commission, the recovery process is held in abeyance pending resolution of the appeal/waiver request.

In the absence of an appeal, request for waiver, or direction from the Commission to hold the process in abeyance, the total elapsed time from issuance of the Notification Letter to final collection by USAC or notification to the Commission of the party's failure to repay the debt is approximately five (5) months.

#### **Description of Audit Findings Outstanding for More Than Six Months**

The recoveries based on audit findings that have been outstanding for more than six months fall into the following four categories:

- There were 2 beneficiary audits older than six months with a potential recovery of \$11,565,607 for which Notification Letters have not been issued. USAC is working with the Commission to implement the recovery process as additional guidance was provided regarding the recovery timeframes referenced in the *Schools and Libraries Fifth Report and Order*.<sup>6</sup> At the time of this filing, recoveries are still underway. All other audit findings older than six months have either been cleared or have resulted in the issuance of a Notification Letter to the applicant and/or service provider, as appropriate, and as explained in further detail below.
- For certain audit findings, the recovery process has been ongoing for more than six months because the applicant and/or service provider appealed the recovery determination to USAC and/or requested a waiver regarding USAC's recovery determination to the Commission. The recovery process was held in abeyance pending USAC's and/or the Commission's

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<sup>3</sup> In the *Schools and Libraries Fifth Report and Order*, the Commission amended its rules "to bring all E-rate beneficiaries and service providers within the ambit of the red light rule." *Id.* at 15821-22, para. 42.

<sup>4</sup> *Id.*

<sup>5</sup> Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 1996) (codified at 31 U.S.C. § 3701 *et seq.*). See also 31 C.F.R. § 285.1, *et seq.* (Treasury's regulations); 31 C.F.R. § 900.1, *et seq.* (Federal Claims Collection Standards); 47 C.F.R. § 1.1901 *et seq.*, (FCC's debt collection regulations); OMD Circular No. A129, "Policies for Federal Credit Programs and Non-Tax Receivables," and Treasury Financial Manual, Volume 1, Part 4, Chapter 4000, "Debt Management Services Collection of Delinquent Non-Tax Debt," (Oct. 18, 2011).

<sup>6</sup> *Application for Review of a Decision of the Wireline Competition Bureau by Net56, Inc.*, CC Docket No. 02-6, Order, 32 FCC Rcd 963, 966, para. 9 (2017). The FCC clarified that the five year recovery timeframe mentioned in the *Fifth Report and Order* was a policy preference and not an absolute bar to recovery.

decision on the appeal. USAC and/or the Commission have since decided the appeals and the recovery processes have resumed.

- The recovery process is being held in abeyance for 22 beneficiary audits with a potential recovery amount of \$13,576,793 because the applicant and/or service provider has appealed USAC's recovery determination to USAC.
  - The recovery process is being held in abeyance for 69 beneficiary audits with a potential recovery amount of \$18,940,645 because the applicant and/or service provider has appealed and/or requested a waiver regarding USAC's recovery determination to the Commission.
- To date, USAC has transferred \$10,255,450 relating to 39 audits to the U.S. Department of Treasury pursuant to the DCIA because neither the applicant nor the service provider has repaid the funds to USAC, or made satisfactory arrangements for payment of the debt.
- The audit performed consistent with the Commission's *Puerto Rico Department of Education Order*<sup>7</sup> covering Funding Years 1998 through 2000 was approved by the USAC Board of Directors and provided to Commission staff. In that Order, the Commission stated that it – rather than USAC – would review the results of that audit to determine any appropriate recovery actions.<sup>8</sup> Because the FCC's review is underway, although the audit has been deemed final for more than six months, recovery activities have not been finalized and therefore, the recovery amounts that may be associated with this audit are not included on the attached spreadsheet.

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<sup>7</sup> *Federal-State Joint Board on Universal Service, Petition of the Puerto Rico Department of Education to Release Funds Associated with the Schools and Libraries Universal Service Support Mechanism for Years 2001 and 2002*, CC Docket No. 02-06, Order, 18 FCC Rcd 25417 (2003) (*Puerto Rico Department of Education Order*).

<sup>8</sup> *See id.* at 25417, 25426-27, paras. 2, 25.